

GUIDANCE NOTES ON THE CONTRACT RULES FOR PACKED COCOA PRODUCTS ON BUYER'S CALL (CP 2)

These Guidance Notes aim to provide informal, non-statutory guidance about FCC Rules. These Guidance Notes do not form part of any FCC Rules whatsoever or any contract subject to any such FCC Rules and shall not affect the construction or interpretation of any such FCC Rules or any such contract.

1. APPLICATION OF CONTRACT RULES

1.1 Law

The Contracts (Rights of Third Parties) Act 1999 does not apply to any contract incorporating CP2. It is aimed at preventing a third party from having any right to enforce any term of the contract, even if the term purports to confer a benefit upon him, unless the contract expressly provides that he may have such a right.

2. GENERAL DEFINITIONS

These Rules do not include any definitions or specifications of products.

Therefore it is essential that Buyers and Sellers agree product definitions and/or specifications to apply to any product traded on this contract.

In particular it should be noted that the EU Directive 2000/36/CE does not specify pressed cocoa butter. Although it is generally accepted that cocoa butter will be pressed unless stated otherwise, Buyers who wish specifically to exclude expeller butter, solvent extracted butter or refined butter in any way are advised to state "Pressed Cocoa Butter" in the description of their contracts.

2.3. Collection Contract

For the purpose of this contract, CPT and CIP contracts fall within the definition of a collection contract.

3. TRANSMISSION OF NOTICES

It is recommended that notices be passed directly between Parties whether or not a broker is involved.

8.1 Delivery terms

As examples

Collection Contract:

- Free Carrier (FCA)
- Ex Works (EXW)
- Carriage Paid to (CPT)
- Carriage Insurance Paid (CIP)

Delivered Contract:

- Delivered Duty Unpaid (DDU)
- Delivered Duty Paid (DDP)

9.2 Notice Period

For the purpose of this Rule, a tolerance of one Business day means that the Seller has the option to confirm the date the buyer requested, or the day before, or the day after. Once the Seller has confirmed (within 2 business days) a date in writing, it becomes the guaranteed delivery/collection day.

GUIDANCE NOTES ON THE FCC ARBITRATION AND APPEAL RULES

3.2 Application for Arbitration

- a) Applications for arbitrations must be accompanied by details of the contract and of the dispute.

With effect from 1st March 2010 the FCC Secretariat ceased to have responsibility to assess whether a prima facie case has been established by the Claimant when claiming arbitration. Accordingly, when a claim is lodged with the Federation, the Secretariat will immediately allocate a case reference and will appoint arbitrators to form a Tribunal whose first duty is to assess whether such a prima facie case has been proven. This change in procedure does not in any way alter the responsibility of the Claimant to provide evidence, to be passed on to the Tribunal, that a contract exists and that this contract is subject to FCC Contract Rules and Arbitration and Appeal Rules.

Whilst it is not always possible, or indeed necessary, to have a hard copy contract signed by both parties, this does not obviate the need for clarity in confirming that the parties have elected to trade on the basis of the FCC Contract and that this contract is subject to FCC Arbitration and Appeal Rules.

Therefore, to minimise disputes on jurisdiction, and as laid out in the previous FCC Guidance Note dated 26 January 2009, we recommend that parties adopt the practice of confirmation of business by email or fax stating all of the parameters set out in the FCC Short Form Contract which can be found within the FCC Contract Rules for Cocoa Beans and Cocoa Products.

4.24 & 8.24 Interest

Previous editions of the Arbitration and Appeal Rules required Arbitrators and Boards of Appeal always to award interest at two percent over the base rate of Barclays Bank or as appropriate in other currencies. Now that compound interest may be awarded it is inappropriate to require Arbitrators and Boards of Appeal always to award an additional two percent over such rates but Arbitrators and Boards of Appeal still have the power to do so in appropriate cases pursuant to the terms of this Rule.